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**UNITED STATES DISTRICT COURT****EASTERN DISTRICT OF TEXAS**

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UNITED STATES OF AMERICA

*versus*

JAMES ANTHONY BEROTTE

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CASE NO. 1:08-CR-86

**ORDER ADOPTING REPORT AND RECOMMENDATION ON COMPETENCY**

The Court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration. Judge Giblin conducted a hearing to determine defendant's competency to stand trial. He concluded that the defendant is incompetent to proceed under 18 U.S.C. § 4241. He further concluded that the defendant is not likely to be restored to competency and there is no substantial probability that the defendant will attain the capacity to permit the proceedings to go forward within a reasonable amount of time.

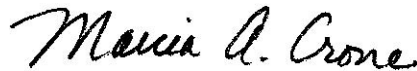
The parties filed notices indicating that they do not object to the magistrate judge's findings and recommendation (#60, #61). The Court ORDERS that the report and recommendation on defendant's competency (#59) is ADOPTED.

The Court finds by a preponderance of the evidence that defendant James Anthony Berotte is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in this defense and he is accordingly incompetent to stand trial under 18 U.S.C. § 4241. The Court further finds that the defendant is not likely to be restored to competency and there is not a substantial probability that he will attain the capacity to permit the proceedings to go forward within an additional reasonable period of time. *See* 18 U.S.C. § 4241(d)(2).

Based on the forensic report and the magistrate judge's recommendation, the Court determines that because the defendant's mental health condition has not so improved as to permit proceedings to go forward, he should be subject to commitment proceedings under 18 U.S.C. § 4246. The commitment petition should be filed in the United States District Court for the Western District of Missouri, where the defendant is presently in custody, as suggested by the forensic report. *See* U.S.C. § 4241(d).

Finally, the Court ORDERS that the United States Attorney's Office for the Eastern District of Texas maintain contact with the United States Attorney's Office for the Western District of Missouri and file quarterly status reports in this case updating the Court on any commitment proceedings filed against Mr. Berotte. The United State's Attorneys Office is directed to file its first status report on or before October 1, 2012.

SIGNED at Beaumont, Texas, this 29th day of August, 2012.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE